

JOHN MCCAIN
ARIZONA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON HEALTH,
EDUCATION, LABOR, AND PENSIONS
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
COMMITTEE ON INDIAN AFFAIRS

United States Senate

February 6, 2013

John O. Brennan
Assistant to the President for Homeland Security and Counterterrorism
The White House
1600 Pennsylvania Avenue NW
Ground Floor, West Wing
Washington, DC 20500

Dear Mr. Brennan:

As the Senate prepares to review your nomination for the position of Director of the Central Intelligence Agency, I write to ask that you respond in writing to the attached questions at your earliest convenience. I look forward to your reply and would welcome the opportunity to discuss these important matters with you further.

Thank you in advance for your consideration of the following questions:

Sincerely,


John McCain
United States Senator

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Enhanced Interrogation and Rendition

1. On January 17, 2010, the *New York Times* quoted you as saying: "I was somebody who did oppose waterboarding. I opposed different aspects of the enhanced interrogation program. But there were some aspects of it that I concurred with." You cited, for instance, "if you grab somebody by the lapels, and you say, 'Oh, my goodness, you've violated their rights as a person,' well, I'm not going to go that far."
 - a. Individuals working for the CIA engaged in waterboarding detainees while you served in senior positions there, including as Director of the Terrorist Threat Integration Center. Is there any record from this period of time of your alleged opposition to waterboarding? If so, please identify these records.
 - b. Did you express your alleged opposition to waterboarding or other enhanced interrogation techniques to Director George Tenet or his successors at the time that the CIA was engaged in these practices? If not, why not?
 - c. Exactly what aspects of the enhanced interrogation program did you disagree with? Were there any aspects that you concurred with? Specifically, did you concur with the use of the following techniques:
 - i. extended sleep and sensory deprivation;
 - ii. forcing detainees to assume painful, contorted, and/or bound positions, or forcing them into extremely confined spaces, such as narrow boxes, for sustained durations of time; and
 - iii. forcing detainees to stand for long periods of time until they experienced pain?
 - d. Did you concur with using several or all of these techniques in combination for extended periods of time to "break" detainees?

2. You said on the CBS Early Show on November 2, 2007: "[T]he C.I.A. has acknowledged that it has detained about 100 terrorists since 9/11, and about a third of them have been subjected to what the C.I.A. refers to as enhanced interrogation tactics, and only a small proportion of those have in fact been subjected to the most serious types of enhanced procedures ... There have [sic] been a lot of information that has come out from these interrogation procedures that the agency has in fact used against the real hard-core terrorists. It has saved lives. And let's not forget, these are hardened terrorists who have been responsible for 9/11, who have shown no remorse at all for the deaths of 3,000 innocents."
 - a. How do you explain this statement given your more recent statements that you opposed many aspects of the enhanced interrogation program, and in particular, your statement on April 30, 2012 that such techniques "are not needed to keep our country safe"?
 - b. Do you believe that intelligence gained from detainees who were subjected to enhanced interrogation techniques while in CIA custody was directly responsible for the disruption of active terrorist plots?

- c. You stated that the use of enhanced interrogation procedures has “saved lives.” Can you specify which detainees were subjected to enhanced interrogation procedures who as a result offered information that “saved lives”?
 - d. Do you believe that the use of waterboarding and other enhanced interrogation techniques produced intelligence that enabled the CIA to locate Osama bin Laden?
- 3. Do you agree with President Obama and Attorney General Eric Holder that elements of the enhanced interrogation program constituted torture?
- 4. Chapter 1 of the U.S. Army Field Manual 34-52 states: “Experience indicates that the use of force is not necessary to gain the cooperation of sources for interrogation. Therefore, the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear.”

Moreover, the C.I.A.’s July 1963 KUBARK Counterintelligence Interrogation Manual states: “Intense pain is quite likely to produce false confessions, concocted as a means of escaping from distress. A time-consuming delay results, while investigation is conducted and the admissions are proven untrue. During this respite the interrogatee can pull himself together. He may even use the time to think up new, more complex ‘admissions’ that take still longer to disprove.”

- a. Do you agree with these statements that torture generally produces unreliable information? If not, why not?
 - b. Do you agree that the use of torture creates enemies for America among the populations whose support we need to fight terrorism; deters informants from voluntarily offering intelligence; and undermines cooperation with our allies? If not, why not?
 - c. How would you weigh the intelligence costs we incurred by using the “enhanced interrogation techniques” against any benefits we may have obtained?
 - d. How would you weigh the damage done to the image of the United States in the world as a result of the publication of the use of these techniques?
- 5. When the U.S. Congress sought to prohibit the use of enhanced interrogation techniques in, for example, the Detainee Treatment Act of 2005, did you discuss this legislation with Members of Congress? If so, what did you urge them to do, and why?
- 6. In your role as Director of Operations of the CIA, you were responsible for the management of day-to-day operations at the Agency, including budgets, facilities, and personnel. In this capacity, what role did you play in establishing; selecting the locations of; and allocating funds, personnel and equipment to, the secret detention facilities known as “black sites” operated by the CIA around the world?

7. In responding to a question about rendition on the PBS NewsHour on December 5, 2005, you said: "I think [rendition is] an absolutely vital tool. I have been intimately familiar now over the past decade with the cases of rendition that the U.S. Government has been involved in. And I can say without a doubt that it has been very successful as far as producing intelligence that has saved lives."
 - a. According to published reports, including a *Washington Post* story from May 12, 2009, Ibn al-Shaykh al-Libi, a Libyan al Qaeda operative whom the United States rendered to Egypt, provided false confession under alleged conditions of torture that Saddam Hussein was training al Qaeda operatives in the use of chemical weapons – a claim that found its way into then-Secretary of State Colin Powell's speech to the U.N. Security Council laying out the case for military action in Iraq. In your judgment, was al-Libi's rendition successful in producing intelligence that has saved lives?
 - b. Were you familiar with the way in which al-Libi was treated in Egypt; and, if so, did you express any concerns about it? Did the manner of his treatment raise any issues in your mind about the reliability of intelligence produced by the rendition program?
 - c. Abdul Hakim Belhadj, a Libyan detainee who was subjected to enhanced interrogation techniques and ultimately rendered to back Libya, has claimed that his wife, Fatima Bouchar, was also detained and subjected to similar abuse and mistreatment during her detention, despite the fact that she was pregnant at the time. Is this correct? If so, was this necessary to produce intelligence that saved lives?
 - d. Do you believe today that the CIA's extraordinary rendition program prior to 2005 was conducted in a manner fully consistent with American values and international standards forbidding transfer of detainees to countries where they are likely to face torture?
 - e. If confirmed, what specific reforms or safeguards will you implement to ensure that detainees transferred to third countries are not subject to torture or cruel, inhuman and degrading treatment?
8. What is your opinion of the key findings of the comprehensive study of the CIA's interrogation and detention program conducted by the Senate Select Committee on Intelligence? Please explain any areas of disagreement you may have with any of the report's findings. If confirmed, will you work with the Committee to release publicly an appropriately redacted version of the study?
9. What steps have you taken, and what steps would you take if confirmed, to ensure that officers who objected to, or declined to participate in the former interrogation and detention program, have the same opportunities for recognition and advancement as those who supported or took part in those programs?

Targeted-Killing Policies

1. In a speech at the Woodrow Wilson International Center for Scholars on April 30, 2012, you stated: “President Obama and those of us on his national security team are very mindful that as our nation [conducts strikes using remotely piloted aircraft], we are establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians. If we want other nations to use these technologies responsibly, we must use them responsibly. If we want other nations to adhere to high and rigorous standards for their use, then we must do so as well. We cannot expect of others what we will not do ourselves. President Obama has therefore demanded that we hold ourselves to the highest possible standards—that, at every step, we be as thorough and deliberate as possible.” What specific rules governing the Administration’s use of targeted killing would preclude governments like those of Russia and China from killing political opponents in other countries so long as they declared themselves to be at war with the targeted individuals and the strikes adhered to the principles of distinction and proportionality?

2. You have discussed the Obama Administration’s justification and procedures for approving targeted killing in several public speeches, but notwithstanding recent leaks of some Department of Justice memoranda, the Administration has neither released nor shared with the Congress the full legal rationale for the program. How can the United States hold other countries to “high and rigorous standards” if we do not disclose the legal basis that we believe governs the use of drones for targeted killing, including the legal limits on their use? Would you, if confirmed, provide, or otherwise help ensure the production of, these legal opinions to Congress?

3. The *Washington Post* reported on January 19, 2013, that the Administration is nearing completion of a “playbook” for targeted killing operations that is meant to establish limits on the use of this tactic, in part to ensure that the U.S. is setting the right example for other nations. The report also stated that CIA operations in Pakistan will be temporarily exempt from the new rules, because of the urgency of intensifying strikes against suspected terrorists there.
 - a. Do you believe that the United States should maintain different rules governing targeted killing in different theaters of operation?
 - b. Do you believe it would be acceptable for another country to set high and rigorous standards for targeted killing operations consistent with those adopted by the U.S., and then to exempt themselves from those standards in certain theaters of operation?

4. You stated on April 30, 2012, that the Administration’s “unqualified preference is to only undertake lethal force when we believe that capturing the individual is not

feasible” – an important safeguard against overuse of this tactic by the United States and by other countries.

- a. How do you determine whether capturing an individual is feasible?
 - b. On November 28, 2012, *McClatchy Newspapers* reported on a drone strike that allegedly took place on November 7, 2012, outside Beit al Ahmar in Yemen and killed suspected al Qaeda operative Adnan al Qadhi. According to the report, Beit al Ahmar is not in an isolated area beyond the reach of Yemeni government forces, but rather a town nine miles from the Yemeni capital of Sana’a, which is controlled by the government and is home to much of the country’s military leadership. Is a drone strike in such a location consistent with the Administration’s unqualified preference to only undertake lethal force when capture is not feasible?
5. In a speech on April 30, 2012, you stated that “when considering lethal force we ask ourselves whether the individual poses a significant threat to U.S. interests.” In the same speech you stated that a “significant threat” may be posed by “an individual who is an operational leader of al-Qa’ida or one of its associated forces”; an individual “in the midst of actually training for or planning to carry out attacks against U.S. interests”; or an individual possessing “unique operational skills that are being leveraged in a planned attack.” However, the Obama Administration has also reportedly authorized so-called “signature strikes” in Pakistan, in which lethal force is used against individuals based on their behavior or presence in a particular area, even if their identity is not known.
 - a. How do “signature strikes” square with your statement that targeted killing operations are only approved when a targeted individual poses a “significant threat to U.S. interests?”
 - b. In some theaters, under what circumstances would all military-age males found in close proximity to a targeted individual be considered lawful targets, and not counted as civilians when killed? In these circumstances, how can such individuals be considered a significant and imminent threat to the U.S.?
 - c. How can the Administration be certain it is not killing civilians in areas, like many parts of Yemen and Pakistan, where virtually all men, including civilians, carry weapons?
6. The *Washington Post* reported on October 24, 2012 that you have been “leading efforts to curtail the CIA’s primary responsibility for targeted killings,” and argued that the agency “should focus on intelligence activities and leave lethal action to its more traditional home in the military, where the law requires greater transparency.” The article reported you as saying: “I think the president always needs the ability to do things under his chief executive powers and authorities, to include covert action.... [But] I think the rule should be that if we’re going to take actions overseas that result in the deaths of people, the United States should take responsibility for that.”
 - a. If the United States is engaged in ongoing lethal operations against a defined enemy with which it is at war, do you think it is wise to assign responsibility

- for the conduct of that war to an intelligence agency acting covertly, instead of to America's armed forces?
- b. Do you believe that there are advantages to assigning responsibility for the conduct of war to the U.S. armed forces, given their traditions of transparency, accountability to the American people, and understanding of the laws of war?
 - c. If confirmed, will you advocate shifting increasing responsibility for drone strikes from the CIA to the Department of Defense?
 - d. How do you see the allocation of roles and responsibilities between the CIA and the Department of Defense regarding overseas counter-terrorism operations, including lethal drone strikes, and the offensive use of cyber-weapons?
 - e. If confirmed, how would you improve Congressional oversight of these activities when conducted by the CIA?
7. You have correctly sought to establish administrative and legal principles within the executive branch to guide the President's employment of lethal drone strikes and other secret war powers. What greater role, if any, do you believe the Congress should have in updating U.S. laws and statutes so that the use of new wars powers that are vital to our national security, such as lethal drone strikes and offensive cyber operations, can be sustained within a broader democratic and legal framework that ensures greater accountability to the American people and their elected representatives in the Congress?

Benghazi

- I. What specific role, if any, did you have in drafting, editing, reviewing or clearing the talking points used by U.S. Ambassador to the United Nations Susan Rice for her news media appearances on September 16, 2012 in connection with the attack on the U.S. diplomatic mission in Benghazi?

National Security Leaks

1. What communications, if any, did you have with any person who does not hold a security clearance, including any member of the press, about any of the classified programs that were recently reported by journalists with the *New York Times*, *Washington Post* or *Newsweek*, or publicized in recent books, regarding the use of the subjects below? Please be specific with dates, times and persons with whom you had these communications.
 - a. cyber-weapons against Iran;
 - b. the expanded use of drones in Yemen and the Horn of Africa, including the associated "kill-list"; and
 - c. the military operation resulting in the killing of Osama bin Laden.
2. Are you aware of any such communications having occurred between any other Obama Administration official and any person without a security clearance,

including any member of the press? Please be specific with dates, times and persons participating in these communications.

3. In your view, is there authority outside of the formal declassification process described in Executive Order 13526 for making classified information available to persons without a security clearance?
 - a. If so, with whom is this authority vested?
 - b. Would the exercise of such authority, sometimes called “instant declassification,” result in a declassification of the information so disclosed?
 - c. To your knowledge, did such “instant declassifications” occur with regard to the disclosures described above?